

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

75-2014

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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P/S

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UNITED STATES OF AMERICA, ex rel :
JOHN McLEAN :

Relator-Appellant :

-against- :

JEROME PATTERSON, Superintendent :
Eastern Correctional Facility :

Respondent-Appellee :

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DOCKET NO. 75-2014

On Appeal from the United States District Court
for the Eastern District of New York

REPLY BRIEF FOR RELATOR-APPELLANT

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CASES	1
POINT ONE	2
In reply to Appellee's Point I (pp. 24-25)	

TABLE OF CASES

	<u>PAGE NO.</u>
Gatlin v. United States, 326 F.2d 666 (D.C. Cir., 1963)	3
United States v. Harris, 403 U.S. 573	3
United States v. Viggiano, 433 F.2d 716 (2nd Cir., 1970) cert den. 401 U.S. 938	3
Wong Sun v. United States, 371 U.S. 471	3

POINT ONE

IN REPLY TO APPELLEE'S POINT I
(PP. 24-25)

Appellee argues that the reliability of the informer Wood's information is established by the showing that it was against his penal interest.

Woods had had his picture selected by complainant whose property had been in his possession. He was then interrogated by the police who obtained several oral statements from him. (The written statement, relief upon by the State trial judge, had been completed subsequent to Sonesen's leaving to arrest appellant.) The only possible inculpatory element was that provided in Sonesen's testimony as to what Gomez had told him Woods had said

He told me in talking to James Woods that James Woods had told him that the defendant sometime after the crime had taken place, came to his room...with the property of the complainant and that he had asked him if he could do anything with it and I believe James Woods took this property from the defendant, John McLean. (pp. 19-20, Minutes of Omnibus Hearing.)

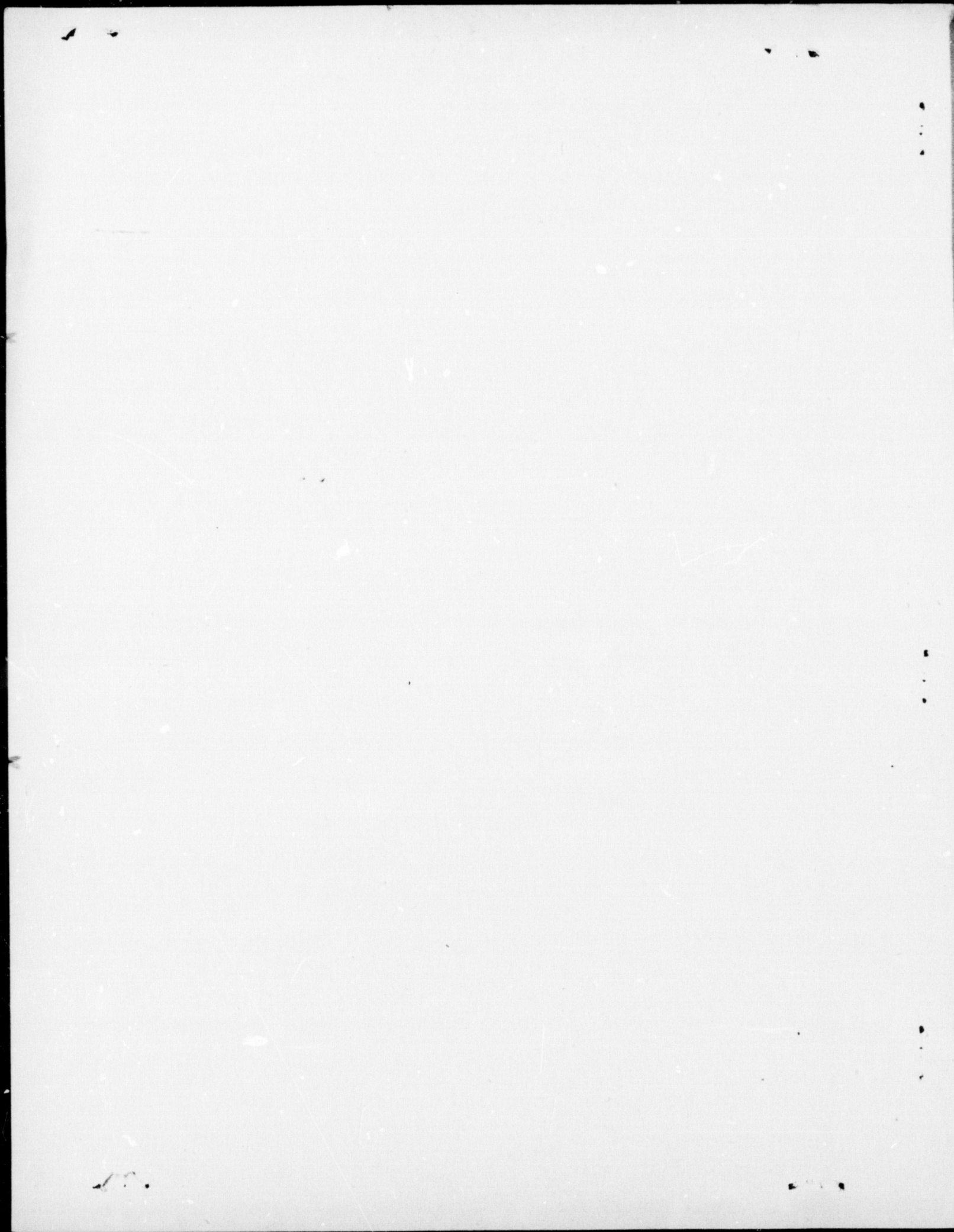
The statement against penal interest is thus a hearsay repetition that perhaps James Woods had admitted that he had received some property from appellant. Even if Sonesen correctly recalled what Gomez had related to him and if Woods had, in fact, said that Woods gave him some property, any prejudice to Woods' penal interest is slight. He has, in fact, admitted nothing. Indeed his statements constitute an attempt to shift the blame for the robbery to the defendant. He was the individual whose picture was selected by complainant. Being questioned

about the robbery, he inculpated the appellant. Soneson was not sure Woods said he received the property. He did not know whether Woods was arrested for any crime. In fact, Woods was never arrested for any crime connected with these events. (P. 3, Appellee's brief).

Clearly this is not the sort of statement against penal interest that can verify otherwise unreliable information. In Wong Sun v. United States, 371 U.S. 471 the statement from one Hom Way that he had brought heroin from "Blackie Toy" was rejected as providing probable cause for the latter's arrest since "the narcotics agents had no basis in experience for confidence in the reliability of Hom Way's information; he had never before given information." at 480. However, his statement was substantially more adverse to his penal interest than the vague information from Woods. See also Gatlin v. United States, 326 F2d 666, 671-672 (D.C.Cir., 1963).

Wood's statement is unlike the clear admissions of guilty of a crime present in United States v. Harris, 403 U.S. 573 and United States v. Viggiano 433 F.2d 716 (2nd Cir., 1970). cert. den. 401 U.S. 938. Moreover, in neither of those cases is there any evidence that the informant may be seeking to shift culpability from himself. In Viggiano, the informer had in fact walked in off the street to give his report. In Harris it is unclear what led the authorities to the informer.

The claim that the inculpatory nature of Wood's information renders it reliable cannot be sustained in light of the circumstances surrounding the giving of the information.



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AFFIDAVIT OF SERVICE

BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Lorraine Papas being duly sworn deposes and says that she is a clerk in the office of James J. McDonough, Attorney in Charge, Legal Aid Society of Nassau County, N.Y., Criminal Division, attorney for the above named ~~JOHN McLEAN~~ JOHN McLEAN herein. That she is over 21 years of age, and resides at Mineola, New York. That she served the within Reply Brief for Relator-Appellant on the 14th day of April 19 75 upon Ms. Margery Evans Reifler, Attorney General's Office, 2 World Trade Center, New York, New York by depositing true copies of same securely enclosed in a post-paid wrapper in the Letter Box, maintained and exclusively controlled by the United States at 400 County Seat Drive, Mineola, New York.

Lorraine Papas

Sworn to before me this

14th day of April 1975.

Allen M. Kranz

ALLEN M. KRANZ
NOTARY PUBLIC, State of New York
No. 41-4519724, Queens County
Commission Expires March 30, 1976



